

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL BALZARINI,

1:01-cv-05033-AWI-WMW-P

Plaintiff,

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS** (Doc. 82)

vs.

**ORDER GRANTING DEFENDANTS'
MOTION TO DISMISS** (Doc. 78)

E. ALAMEIDA, et al.,

Defendants.

ORDER DISMISSING ACTION

Plaintiff, Michael Balzarini ("Plaintiff"), a state prisoner proceeding pro se and in forma pauperis, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 72-302.

On May 23, 2005, the Magistrate Judge filed Findings and Recommendations that recommended Defendants' motion to dismiss be granted and this action be dismissed for Plaintiff's failure to exhaust administrative remedies prior to filing suit. The Findings and Recommendations were served on the parties and contained notice to the parties that any objections to the Findings and Recommendations were to be filed within thirty (30) days. On June 6, 2005, Plaintiff filed objections.

1 In accordance with the provisions of 28 U.S.C.
2 § 636(b)(1)(C) and Local Rule 73-305, this Court has conducted a
3 de novo review of this case. Having carefully reviewed the
4 entire file, the court agrees with the recommendation that
5 Defendants' motion to dismiss be granted.

6 Pursuant to the Prison Litigation Reform Act of 1995, "[n]o
7 action shall be brought with respect to prison conditions under
8 [42 U.S.C. § 1983], or any other Federal law, by a prisoner
9 confined in any jail, prison, or other correctional facility
10 until such administrative remedies as are available are
11 exhausted." 42 U.S.C. § 1997e(a). The section 1997e(a)
12 exhaustion requirement applies to all prisoner suits relating to
13 prison life. Porter v. Nussle, 435 U.S. 516, 532 (2002).
14 Prisoners must complete the prison's administrative process,
15 regardless of the relief sought by the prisoner and regardless of
16 the relief offered by the process, as long as the administrative
17 process can provide some sort of relief on the complaint stated.
18 Booth v. Churner, 532 U.S. 731, 741 (2001). Exhaustion must
19 occur prior to filing suit. McKinney v. Carey, 311 F.3d 1198,
20 1199-1201 (9th Cir. 2002).

21 The California Department of Corrections has an
22 administrative grievance system for prisoner complaints. Cal.
23 Code Regs., tit. 15 § 3084, et seq. "Any inmate or parolee under
24 the department's jurisdiction may appeal any departmental
25 decision, action, condition, or policy which they can reasonably
26 demonstrate as having an adverse effect upon their welfare." Id.
27 at 3084.1(a). Four levels of appeal are involved, including the
28 informal level, first formal level, second formal level, and

1 third formal level, also known as the "Director's Level." Cal.
2 Code Regs. tit 15, § 3084.5 (2004).

3 Here, Defendants offer evidence that Plaintiff did not
4 appeal the issues underlying this action prior to filing suit to
5 the Director's Level. Normally evidence only showing that a
6 prisoner has not had an appeal resolved at the Director's Level
7 is insufficient to find that he did not exhaust administrative
8 remedies because pursuit of an appeal through the Director's
9 Level of review is not necessarily required for exhaustion to
10 have occurred. Brown v. Valoff, 422 F.3d 926, 935 (9th Cir.2005).
11 "[A] prisoner need not press on to exhaust further levels of
12 review once he has either received all 'available' remedies at an
13 intermediate level of review or been reliably informed by an
14 administrator that no remedies are available." Id.

15 In his objections, Plaintiff states that he was not required
16 to exhaust his administrative remedies to the Director's Level
17 because his appeal was granted at the lower level. Specifically,
18 Plaintiff states that he had "already prevailed on [his]
19 grievance requesting that [he] be seen by a specialist, and
20 further appeal would not have given [him] any additional relief."
21 Satisfaction of the exhaustion requirement does not require that
22 inmates draft grievances with the precision of an attorney,
23 laying out every fact, identifying every defendant by name, and
24 identifying which constitutional rights were violated by which
25 actions or omissions. However, satisfaction of the exhaustion
26 requirement requires that inmates, in their grievances, place
27 prison personnel on fair notice as to the events that
28 subsequently give rise to suit. In this action, Plaintiff seeks

1 to hold Defendants liable for being deliberately indifference to
2 his medical needs. Plaintiff contends that Defendants failed to
3 give him medication that would have been effective in treating
4 Plaintiff's "HCV" condition. Plaintiff claims that without the
5 medication he only has a "50-50 change of living past the year
6 2004" and he has been in pain. The grant of an appeal to see a
7 specilist is not sufficient to show exhaustion of a claim
8 regarding Defendants' deliberate difference to Plaintiff's
9 medical needs. There is no evidence that Plaintiff's desire of
10 adequate medical care was addressed when he was given permission
11 to see a specialist. Because the only lower level appeal
12 Plaintiff concedes was granted concerned seeing a specialist,
13 Plaintiff did not exhausted his remedies prior to filing suit.

14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. The Findings and Recommendations, filed May 23, 2005,
16 are ADOPTED;
- 17 2. Defendant's motion to dismiss is GRANTED;
- 18 3. This action is CONCLUDED in its entirety; and,
- 19 4. The Clerk of the Court shall close the case.
- 20

21 IT IS SO ORDERED.

22 **Dated: February 14, 2006**
23 0m8i78

/s/ Anthony W. Ishii
UNITED STATES DISTRICT JUDGE